1907

DEBI PRASAD v. SHEODAT RAI.

discretion I refuse in the present case to set aside the order. With the consent of both parties I make an express direction that the order of the Magistrate shall be deemed to apply only to plot No. 58. Inasmuch as I consider that it is of the greatest importance that Magistrates should strictly comply with the provisions of the Code, I direct that a copy of this judgment be sent to the Deputy Magistrate who tried the case. The application is rejected.

1907
July 20.

APPELLATE CIVIL.

Before Mr. Justice Dillon.

BANWARI LAL AND OTHERS (PLAINTIFFS) *v.* MUSAMMAT GOPI (DEFENDANT).*

Act (Local) No. II of 1901 *(Agra Tenancy Act), section* 199 *(a)—Limitation —Defendant referred to Civil Court—Act No. XV of* 1877 *(Indian Limitation Act), schedule II, article* 120.

When, under section 199 of the Agra Tenancy Act, 1901, an order is passed by a Revenue Court directing the defendants to file a suit in a Civil Court within the time limited by that section, the ordinary period of limitation is thereupon suspended and the special period provided by the Tenancy Act is substituted.

The defendants filed a suit in the Civil Court within three months. It was decided against them. They appealed, and in appeal withdrew their suit with liberty to bring a fresh suit. *Held* that the fresh suit, filed after the expiry of the period limited by the order of the Revenue Court, was barred, and the defendants could not fall back upon the provisions of the Indian Limitation Act, 1877.

THE facts of this case are as follows :—

One Manick Chand, ancestor of the defendant respondent, instituted a suit against the plaintiffs in the Revenue Court for arrears of rent in respect of two groves situated in mauza Bithri. In that suit the present plaintiffs, who were then defendants, pleaded that they had proprietary rights in the grove in question. Thereupon the Revenue Court passed an order on the 13th of November 1903, under section 199, clause (*a*) of Act No. II of 1901, requiring them to institute a suit within three months in the Civil Court for the determination of such question of title. They accordingly instituted a suit in the Civil Court, which was

* Second Appeal No. 505 of 1906, from a decree of Pitambar Joshi, Subordinate Judge of Bareilly, dated the 24th of March 1906, reversing a decree of Udit Narain Singh, Munsif of Havali, Bareilly, dated the 27th of June 1905.

decided against them on the 13th of May 1904. They appealed on the 20th of June 1904, but withdrew the appeal with leave to bring a fresh suit on the 5th of September 1904. Before the appeal was filed, the Revenue Court, presumably following the decision of the Munsif, dated 13th May 1904, gave an *ex parte* decree for rent against them on the 11th of June 1904. The plaintiffs then brought the present suit, on the 29th of March 1905, sixteen months after the passing of the Revenue Court's order referring them to the Civil Court, asking for a declaration that they were owners in possession of the groves. The Court of first instance (Munsif of Bareilly) decreed the claim. The lower appellate Court (Subordinate Judge of Bareilly) reversed the Munsif's decree and dismissed the suit, holding that it was not maintainable, inasmuch as it was instituted beyond the period of three months allowed by the order of the Revenue Court, dated 13th November 1903. The plaintiffs appealed to the High Court.

Dr. *Satish Chandra Banerji*, for the appellants.

Babu *Sital Prasad Ghosh*, for the respondent.

DILLON, J.—The suit out of which this appeal has arisen was brought by the plaintiffs appellants for a declaration that they are the owners in possession of the groves Nos. 2806 and 2814 situated in mauza Bithri. The facts of the case are as follows:—One Manick Chand, ancestor of the defendant respondent, instituted a suit against the plaintiffs in the Revenue Court for arrears of rent in respect of these groves. In that suit the present plaintiffs, who were then defendants, pleaded that they had proprietary rights in the grove in question. Thereupon the Revenue Court passed an order on the 13th of November 1903, under section 199, clause (*a*) of Act No. II of 1901, requiring them to institute a suit within three months in the Civil Court for the determination of such question of title. They accordingly instituted a suit in the Civil Court, which was decided against them on the 13th of May 1904. They appealed on the 20th of June 1904, but withdrew the appeal with leave to bring a fresh suit on the 5th of September 1904. Before the appeal was filed, the Revenue Court, presumably following the decision of the Munsif, dated 13th May 1904, gave an *ex parte* decree for rent against them on

1907

BANWARI LAL v. MUSAMMAT GOPI.

the 11th of June 1904. The plaintiffs have now brought the present suit on the 29th of March 1905, sixteen months after the passing of the Revenue Court's order, referring them to the Civil Court, and the question is whether such a suit is maintainable. The lower appellate Court has held that it is not, inasmuch as it was instituted beyond the period of three months allowed by the order of the Revenue Court, dated 13th November 1903, and has dismissed the plaintiffs' suit. For the appellants it was ably argued by Dr. *Satish Chandra Banerji* that the suit was not barred by the special period of limitation provided by section 199 of Act No. II of 1901, and that under article 120 of schedule II of the Limitation Act, No. XV of 1877, it could be brought at any time within six years from the date when the cause of action accrued to the plaintiff. It was further argued that the decision of the Revenue Court, dated 11th June 1904, in the rent suit did not finally decide the question of title, and that it does not therefore bar the present suit. For the defendant respondent it was contended that the suit was barred by the special period of limitation provided by section 199 and also by the decision of the Revenue Court, dated 11th June 1904, decreeing the suit for rent. I shall first proceed to consider and decide the question whether or not the limitation provided by section 199 of Act No. II of 1901 overrides the longer period of limitation, namely, six years, provided by article 120 of schedule II of Act No. XV of 1877. In my opinion when an order under section 199 of Act No. II of 1901 is passed by a Revenue Court directing the defendants to file a suit in a Civil Court within the time limited by that section the ordinary period of limitation is thereupon suspended and the special period provided by the Tenancy Act is substituted. There would be no meaning in the Legislature having provided a special period of limitation by section 199 if it were possible for the party affected by the order under that section to bring a suit at any time within the ordinary period of limitation. There is no authority on the point, or at least none has been cited, and it seems to me that the view taken by the Court below is the only reasonable view. It is clear that the effect of the withdrawal by the plaintiffs of their former suit is the same as if they had never brought such a suit. They have, therefore, entirely failed to

obey the order of 13th November 1903 which directed them to bring a suit in a Civil Court within three months from the date of such order, and the present suit is therefore barred. I accordingly decide this point against the plaintiffs appellants. In this view it is unnecessary to decide the second question as to whether or not the decision by the Revenue Court in the rent case bars the present suit. The appeal therefore fails and is dismissed with costs.

Appeal dismissed.

1907
August 14.

Before Mr. Justice Banerji and Mr. Justice Aikman.

EMPEROR *v.* MAHENDRA SINGH AND ANOTHER.*

Criminal Procedure Code, sections 110 *and* 526—*Security for good behaviour—Transfer.*

Held that proceedings under section 110 of the Code of Criminal Procedure cannot be transferred to any Court outside the district within which such proceedings have been lawfully instituted. *In the matter of the petition of Amar Singh* (1) and *In the matter of the petition of Gudar Singh* (2) followed.

IN this case proceedings under section 110 of the Code of Criminal Procedure were pending against two persons by name Chaudhri Mahendra Singh and Ujagar Singh in the Court of a Deputy Magistrate of the Etawah district. Several witnesses had been examined, and the case stood adjourned for a few days, when the Magistrate of the district ordered two Tahsildars to proceed to the locality and collect evidence bearing on the case. Mahendra Singh and Ujagar Singh thereupon applied to the High Court for the transfer of the proceedings against them to some other district upon the ground that the action of the District Magistrate had seriously prejudiced their chances of being discharged.

Mr. *C. Ross Alston*, for the applicants.

The Assistant Government Advocate (Mr. *W. K. Porter*) for the Crown.

BANERJI and AIKMAN, JJ.—It has been held by this Court in *In the matter of the petition of Amar Singh* (1) and in *In the matter of the petition of Gudar Singh* (2) that a case like the

* Miscellaneous No. 97 of 1907.

(1) (1893) I. L. R., 16 All., 9. (2) (1897) I. L. R., 19 All., 291.

1907

EMPEROR v. MAHENDRA SINGH.

present cannot be transferred to another district. The question is open to argument, but we do not feel ourselves justified in disregarding these rulings. We therefore dismiss the application. At the same time we cannot approve of the action taken by the District Magistrate, however well-intentioned that action may have been, specially having regard to the fact that the case might come before himself in appeal under section 406 of the Code of Criminal Procedure.

APPELLATE CIVIL.

1907
July 24.

Before Mr. Justice Banerji and Mr. Justice Aikman.

LOHRE (PLAINTIFF) *v.* DEO HANS AND ANOTHER (DEFENDANTS).*

Appeal—Parties—Estoppel—Procedure.

The plaintiff having obtained a decree against one of two defendants acquiesced in that decree, but the defendant judgment-debtor appealed, making the other defendant also a party to his appeal, with the result that the plaintiff's suit was dismissed. *Held* that it was not open to the plaintiff in second appeal to contend that the Court below should have made a decree against that defendant with regard to whom he had acquiesced in the dismissal of his suit. *Farzand Ali Khan* v. *Bismillah Begam* (1) followed.

THE plaintiff in this case sued a tenant, one Deo Hans, for rent. The tenant pleaded payment of the whole rent to Sita Ram, the plaintiff's co-sharer in the holding. The Court of first instance decreed the suit as against Sita Ram and dismissed it *qua* Deo Hans. Sita Ram then appealed, making Deo Hans a party to his appeal, but the plaintiff acquiesced in the decree which he had obtained against Deo Hans alone. The lower appellate Court (District Judge of Agra) allowed Sita Ram's appeal, and dismissed the suit. The plaintiff appealed to the High Court, urging that the Court below was wrong in dismissing the plaintiff's claim as against both defendants.

Pandit *Mohan Lal Sandal*, for the appellant.

Pandit *Baldeo Ram Dave*, for the respondent Sita Ram.

BANERJI and AIKMAN, JJ.—The suit which has given rise to this appeal was brought by Lohre, appellant, against Deo Hans, respondent, for arrears of rent for the years 1309 to 1312 Fasli.

* Second Appeal No. 158 of 1906 from a decree of F. E. Taylor, District Judge of Agra, dated the 12th of December 1905 reversing a decree of Habib-Ullah, Assistant Collector, Agra, dated the 28th of June 1905.

(1) (1904) I. L. R., 27 All., 23.